

MEMORANDUM OPINION
& ORDER

On May 13, 2011, defendants filed a motion for summary judgment. By letter dated May 13 (the "May 13 Letter"), plaintiff's counsel, Thomas Ricotta of Leeds, Morelli, & Brown,

P.C. (the "Firm"), requested that the Court: (1) enter an Order allowing the Firm to withdraw as counsel of record for Smith; (2) grant a lien in favor of the Firm for any fees associated with the legal services it provided to Smith in an amount to be determined at the conclusion of the matter; and, (3) grant a ninety-day stay to permit Smith to retain new counsel. That same day, Smith filed a pro se motion seeking, inter alia, sanctions against defense counsel, including an extension of discovery. In a letter dated May 15, Smith opposed the Firm's request for an attorney's lien and reiterated the arguments raised in his motion for sanctions.

DISCUSSION

Plaintiff's Motion for Sanctions

Plaintiff contends that defendants should be sanctioned for their failure to comply with discovery deadlines set out in Orders of October 25, January 26, and March 15. Throughout discovery, plaintiff was represented by counsel and any issues that were identified by the parties were addressed by the Court prior to the close of discovery. Thus, the plaintiff's motion for sanctions and to reopen the discovery period is denied.

The Firm's Request for an Attorney's Lien

Attorney's liens are "a creation of state law." Binder & Binder PC v. Barnhart, 399 F.3d 128, 132 (2d Cir. 2005). New York Judiciary Law § 475 provides that "[f]rom the commencement

of an action . . . the attorney who appears for a party has a lien upon his client's cause of action . . . which attaches to a . . . decision, judgment or final order in his client's favor, and the proceeds thereof in whatever hands they may come." N.Y. Judiciary Law § 475 (McKinney 2005). New York law further provides that "upon the petition of the client or attorney" the court "may determine and enforce the lien." Id.

The Firm's application for the imposition of a lien is granted pursuant to § 475. The amount of the lien, however, will be determined if and when Smith receives a judgment in his favor.

Request for Stay of Litigation

The Firm requests a ninety-day stay so that Smith may retain new counsel. This application is denied.

The deadline for summary judgment motions has already been extended twice and it was Smith's decision to fire his counsel on the day that motion practice commenced without having retained alternative representation. The summary judgment briefing schedule will be amended, however, to reflect plaintiff's status as a pro se litigant.

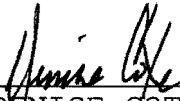
CONCLUSION

Plaintiff's May 13, 2011 motion for sanctions is denied. The motion by plaintiff's counsel to withdraw as counsel to the plaintiff is granted. An attorney's lien on behalf of

plaintiff's counsel is entered against any judgment in the plaintiff's favor. Leeds, Morelli, & Brown, P.C. shall turn over Smith's litigation file to him no later than June 3, 2011. A separate scheduling order shall control the remainder of this case.

SO ORDERED:

Dated: New York, New York
May 24, 2011



DENISE COTE
United States District Judge

COPIES SENT TO:

Daniel Smith
8 Valley View Terrace
Suffern, NY 10901

Thomas Ricotta
Leeds Morelli & Brown, P.C.
One Old Country Road, Suite 347
Carle Place, NY 11514

Christopher A. Seacord
Assistant Corporation Counsel
The City of New York Law Dept.
100 Church Street
New York, NY 10007